



Michael Best & Friedrich LLP

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February 13, 2012

BY ECF

Honorable Diane P. Wood
Circuit Judge
Honorable J.P. Stadtmueller
District Judge
Honorable Robert M. Dow, Jr.
District Judge
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN
517 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

Re: *Baldus v. Brennan*, No 11-CV-562
(Consolidated with *Voces de la Frontera, Inc. v. Brennan*, No. 11-CV-1011)

Dear Judges Wood, Stadtmueller, and Dow:

This letter concerns two subpoenas issued by the Baldus plaintiffs to Tad Ottman and Adam Foltz, who are staff members for Senate Majority Leader Scott Fitzgerald and Speaker Jeff Fitzgerald respectively. The Court is certainly aware of the disputes previously raised regarding these subpoenas, which were addressed by Orders of the Court dated November 30, 2011, December 20, 2011, and January 3, 2012. We have sought to fully comply with the Court's Orders and, following the January 3rd Order, Mr. Ottman and Mr. Foltz produced all responsive documents that had previously been withheld on legislative privilege grounds.

Mr. Ottman and Mr. Foltz were subsequently made available for the continuation of their prior depositions. During the course of Mr. Ottman's deposition, a dispute arose regarding the application of the attorney-client privilege as it relates to communications between counsel, Michael Best & Friedrich LLP and Troupis Law Office LLC, and their clients, the Wisconsin Senate and Wisconsin Assembly, by their respective leaders. Mr. Ottman and Mr. Foltz subsequently provided a privilege log identifying 84 documents, mostly email correspondence, which we believe fall within the scope of the attorney-client privilege.

Counsel for the Baldus plaintiffs dispute the assertion of the attorney-client privilege with respect to these documents for several reasons. However, through an exchange of correspondence between counsel, we have agreed that the most expeditious means of resolving this dispute, particularly in light of the fast-approaching trial date, is to submit the documents for *in camera* review by a Magistrate Judge. A copy of the various correspondence between counsel related to this issue are attached hereto as Exhibits A through I.

Honorable Diane P. Wood
Honorable J.P. Stadtmueller
Honorable Robert M. Dow, Jr.
February 13, 2012
Page 2

We, as counsel for the Senate and Assembly, along with counsel for the Baldus plaintiffs have agreed to jointly request that a Magistrate Judge be appointed to conduct this *in camera* review and to resolve the attorney-client privilege issues related to these documents. Given that the three-judge panel is the ultimate fact-finder in the case, we believe it appropriate for a Magistrate Judge to conduct that review.

Counsel for the Baldus plaintiffs has also proposed that each side submit a short 3-page brief addressing these issues in order to assist the Magistrate Judge in resolving the matter. We have no objection to such an approach. We stand ready to submit the documents to the Magistrate Judge immediately for *in camera* review and would appreciate the Court appointing a Magistrate Judge for that purpose.

Thank you for the Court's attention to this matter.

Sincerely,

MICHAEL BEST & FRIEDRICH LLP

/s/ Eric M. McLeod

Eric M. McLeod

EMM:skt

Enclosures

cc: Counsel of Record (by ECF)

029472-0001\10992404.1

February 4, 2012

VIA E-MAIL

Eric M. McLeod
Michael Best & Friedrich LLP
One South Pinckney Street, Suite 700
Madison, WI 53703
EMMcLeod@michaelbest.com

Baldus et al. v. Brennan et al.
Case No. 11-CV-562

Dear Eric:

During the deposition of Tad Ottman on Thursday, February 2, 2012, you asserted the attorney-client privilege with respect to certain testimony that we sought to elicit from Mr. Ottman and over documents responsive to the deposition subpoena to Mr. Ottman. As we discussed at length during a break in the deposition, your assertions of privilege raise significant questions in light of the Court's serial discovery decisions and admonitions. Before we initiate a formal resolution of the issues raised by your continued assertion of the attorney-client privilege over materials in Mr. Ottman's possession (and, we assume, in the possession of the other witnesses subject to subpoena), we are writing both for clarification of your position and to attempt, yet again, a resolution of our differences.

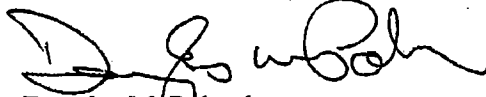
On January 10 and 11, 2012, and February 2, you produced a number of documents that, until then, you had withheld pursuant to claims of legislative and attorney-client privileges. The correspondence accompanying the January 10 and 11 productions did not reflect the assertion of any privilege, nor did it provide a privilege log. Triggered by your objections on February 2 and your assertion that objections to the plaintiffs' document requests based on a claim of attorney-client privilege continue, even in light of the Court's January 3, 2012 order, we ask that you provide a privilege log that identifies those documents by date, author and recipient, and general subject matter.

You did not assert the lawyer-client privilege during the continued depositions of Joe Handrick and Adam Foltz on February 1, 2012. Indeed, the answers by legislative employees—in the absence of any objection—raise the complementary question of waiver of the privilege. We look forward to your very prompt response so that we can pursue the alternatives available to us.

Eric M. McLeod
February 4, 2012
Page 2

In addition, we have a request for production of documents that Mr. Ottman identified at his deposition but that were not included in your document productions to date. Specifically, during the February 1 deposition of Mr. Foltz, I marked as an exhibit and questioned Mr. Foltz about a memorandum that he had prepared for one of the Republican members of the Assembly (the exhibit that I marked was a single example of similar memorandums that Mr. Foltz testified he prepared for each Republican member of the Assembly). Those memorandums were produced to us in Mr. Foltz's responsive materials on January 10. In response to questioning, Mr. Ottman testified during his deposition that he also prepared similar memorandums for Republican members of the Senate, however, we have not been able to identify any such documents among the materials produced to us. We request that you provide copies of those memorandums to us.

GODFREY & KAHN, S.C.



Douglas M. Poland

DMP:aeg

cc: Peter G. Earle (Via E-Mail)
Maria Lazar (Via E-Mail)
Daniel Kelly (Via E-Mail)

7448589_1

McLeod, Eric M (22257)

From: McLeod, Eric M (22257)
Sent: Monday, February 06, 2012 7:57 AM
To: 'Poland, Douglas'
Cc: Peter Earle; lazarms@doj.state.wi.us; Daniel Kelly (dkelly@reinhardtllaw.com); Brown, Dustin
Subject: RE: Baldus et al v. Brennan et al

Doug,

I will respond to your letter as promptly as possible. I don't yet have the transcript of these recent depositions, which I think I need to review in order to address the issues you have raised.

EMM

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emmcleod@michaelbest.com
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From: Poland, Douglas [<mailto:DPoland@gklaw.com>]
Sent: Saturday, February 04, 2012 5:23 PM
To: McLeod, Eric M (22257)
Cc: Peter Earle; lazarms@doj.state.wi.us; Daniel Kelly (dkelly@reinhardtllaw.com); Brown, Dustin
Subject: Baldus et al v. Brennan et al

Eric, attached is a letter following up on Tad Ottman's deposition and the discussions that we had during the deposition regarding assertions of privilege.

Douglas M. Poland
Attorney

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McLeod, Eric M (22257)

From: McLeod, Eric M (22257)
Sent: Tuesday, February 07, 2012 7:48 AM
To: McLeod, Eric M (22257); 'Poland, Douglas'
Cc: 'Peter Earle'; 'lazarms@doj.state.wi.us'; 'Daniel Kelly (dkelly@reinhardtllaw.com)'; 'Brown, Dustin'; Olson, Joseph L (13465)
Subject: RE: Baldus et al v. Brennan et al
Attachments: TADOTTMANSUPPPROD000053.pdf

Doug,

In your letter of Saturday, February 4, 2012, you raise various issues concerning the deposition of Tad Ottman and related matters concerning the attorney-client privilege. Although we just received it last night, I have not yet had the opportunity to review the transcript for Mr. Ottman's deposition, which I think is necessary to more precisely address the issues you have raised. However, I do wish to respond to some of the points in your letter.

It is my recollection that at no time did I instruct Mr. Ottman not to answer any question on grounds of attorney-client privilege. We did have a discussion concerning the applicability of the attorney-client privilege. It is our position that, in addition to addressing the legislative privilege, the Court's decisions hold that the attorney-client privilege does not apply to communications involving Mr. Handrick. The Court did not, however, render the attorney-client privilege inapplicable to communications between counsel and their client, namely members of the legislature and their staff. Importantly, the specific questions you asked of both Mr. Foltz and Mr. Ottman did not require an objection and instruction not to answer on grounds of attorney-client privilege.

With respect to documents, we noted in our privilege logs for Mr. Foltz and Mr. Ottman provided to you in connection with their initial document production that they withheld documents which constitute attorney-client communications. In the more recent supplemental production, Mr. Foltz and Mr. Ottman produced all documents previously withheld on grounds of legislative privilege. We did not restate the attorney-client privilege, as, again, we do not understand that the Court's order compels the disclosure of attorney-client communications. If, as you indicate in your letter, you believe that we need to provide you with a more detailed privilege log concerning the attorney-client communications that were withheld, we will provide you with a more detailed log.

With respect to the memorandums prepared for members of the Senate as referenced in the Ottman deposition, those documents were produced and I believe you marked one or more of them as an exhibit. I have attached those documents for your reference.

I am happy to discuss this matter with you further in order to amicably resolve any issues.

EMM

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From: McLeod, Eric M (22257)
Sent: Monday, February 06, 2012 7:57 AM
To: 'Poland, Douglas'
Cc: Peter Earle; lazarms@doj.state.wi.us; Daniel Kelly (dkelly@reinhardtllaw.com); Brown, Dustin
Subject: RE: Baldus et al v. Brennan et al

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From: Poland, Douglas [mailto:DPoland@gklaw.com]
Sent: Saturday, February 04, 2012 5:23 PM
To: McLeod, Eric M (22257)
Cc: Peter Earle; lazarms@doj.state.wi.us; Daniel Kelly (dkelly@reinhardtllaw.com); Brown, Dustin
Subject: Baldus et al v. Brennan et al

Eric, attached is a letter following up on Tad Ottman's deposition and the discussions that we had during the deposition regarding assertions of privilege.

Douglas M. Poland
Attorney

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February 8, 2012

VIA E-MAIL

Eric M. McLeod
Michael Best & Friedrich LLP
One South Pinckney Street, Suite 700
Madison, WI 53703
EMMcLeod@michaelbest.com

Baldus et al. v. Brennan et al.
Case No. 11-CV-562

Dear Eric:

We write in response to two issues raised in your February 7, 2012, e-mail.

First, we need to resolve our differences regarding the legislature's continuing assertion of the attorney-client privilege over documents in the possession, custody, or control of Messrs. Foltz and Ottman. As discussed during the break in Mr. Ottman's February 2, 2012, deposition, we believe the Court's rulings on December 8, 2011, December 20, 2011, and January 3, 2012, which denied the legislature's motions to quash in their entirety, also overruled the other objections that the legislature raised to producing responsive documents. Those objections included, among others, the assertion of the attorney-client privilege. As I explained on February 2nd, that is why we were surprised to learn that the legislature continued to assert the claim of privilege over any remaining documents.

Even if the Court's orders do not completely foreclose the legislature's assertion of the attorney-client privilege, as we further discussed during the break in the deposition, we appear to have a difference of opinion on the scope of the privilege as it might apply to any documents or information that the legislature continues to withhold. That stems, in part, from the question of whether the withheld communications between the legislative aides or legislators and the legislature's special legal counsel were for the purpose of conveying *legal* advice, as opposed to political, strategic, policy, or other advice on redistricting. This is a critical distinction that, as you know, the Court raised in its December 20, 2011 order.

The responses that you provided to the subpoenas to Messrs. Foltz and Ottman do not even identify the documents being withheld on an assertion of attorney-client privilege. As I requested in my February 4, 2012, letter, we again ask that you provide a privilege log that identifies those documents by date, author and recipient, and general subject matter. Alternatively, given the short time remaining before trial, we suggest that the documents being withheld on privilege grounds be

Eric M. McLeod
February 8, 2012
Page 2

submitted to the Court for *in camera* review and determination of whether the attorney-client privilege shields those documents from disclosure to plaintiffs.

Second, the documents attached to your February 7th e-mail do not appear to coincide with Mr. Ottman's testimony about the memorandums that he prepared for Republican members of the Senate similar to the memorandums that Mr. Foltz prepared for the Republican Assembly. An example of that was marked as Exhibit 100 at Mr. Foltz's deposition on February 1st. (See Ottman Deposition p. 269, line 17, through p. 273, line 12.) Rather, Mr. Ottman testified that the documents attached to your e-mail, which were marked collectively as Exhibit 122 at Mr. Ottman's deposition, constitute the "talking points" that Mr. Ottman prepared for his meetings with Republican members of the Senate. (See Ottman Deposition p. 352, line 8 through p. 357, line 4.) As stated in my February 4th letter, we have not been able to identify any such memorandums among the materials produced to us. We request that you provide copies of those memorandums to us.

It is our goal to resolve these differences without the Court's involvement, if, together, we can accomplish that. We look forward to your prompt response.

GODFREY & KAHN, S.C.



Douglas M. Poland

DMP:aeg

cc: Peter G. Earle (Via E-Mail)
Maria Lazar (Via E-Mail)
Daniel Kelly (Via E-Mail)

7464169_1

McLeod, Eric M (22257)

From: McLeod, Eric M (22257)
Sent: Thursday, February 09, 2012 6:34 PM
To: 'Poland, Douglas'
Cc: 'Peter G. Earle (peter@earle-law.com)'; 'Maria S. Lazar (lazarms@doj.state.wi.us)'; 'Daniel Kelly (DKelly@reinhardtllaw.com)'
Subject: RE: Baldus et al. v. Brennan et al.
Attachments: Privilege Log - Ottman_Foltz - # 10976461 v 1.pdf; Ottman_2-2-12_Exhibit_122.pdf; Foltz_2-1-12_Exhibit_100.pdf

Doug,

As stated in my email of yesterday evening, attached hereto is a privilege log providing relevant descriptive information concerning the documents in the possession, custody or control of Mr. Foltz and Mr. Ottman that have been withheld on grounds of attorney-client privilege.

As we have made clear before, in light of the Court's orders on discovery, no documents have been withheld on grounds of legislative privilege and we have maintained no assertion of privilege on any grounds concerning documents or questions asked of Mr. Handrick.

We do not agree that the Court's orders have eliminated the attorney-client privilege as it relates to matters concerning the provision of legal advice. While the *Evans* case, referred to in the Court's December 20th order, provides that the attorney-client privilege may not extend to "advice on political, strategic or policy issues," we do not believe that any documents are implicated by such an exception. As counsel for the Senate and Assembly, by their respective leaders, we were retained to provide legal advice concerning redistricting matters. The documents withheld on grounds of attorney-client privilege concern matters related to the request for or provision of legal advice.

With respect to your concern that memoranda prepared by Mr. Ottman for members of the Senate have not been produced, it appears that there was confusion created by the questions asked and answers provided at Mr. Ottman's deposition. At pages 270-271 of Mr. Ottman's deposition transcript, he was asked if he prepared memoranda similar to those prepared by Mr. Foltz for member meetings. (See Foltz Exh. 100). Mr. Ottman stated that "[t]here was something not identical but in a similar vein shown to republican senators." You then later asked Mr. Ottman if he had prepared any "talking points for [his] meetings with the individual republican members of the Senate[.]" (Trans. p. 276) He again said yes. However, he did not understand the question to relate to something different from the memoranda he prepared for member meetings.

At page 352 of the transcript you showed him Exhibit 122 and asked him if these were the "talking points" you had asked about before. His response was yes. Again, however, Exhibit 122 comprises the memoranda you had asked about earlier, which Mr. Ottman did not differentiate from your question about "talking points." If you compare Exhibit 100 and Exhibit 122 (attached), it is clear they contain essentially the same types information. Thus, the memoranda have been produced. There are no separate documents that constitute "talking points" used at member meetings.

Finally, we have sought to fully comply with the Court's orders on discovery and believe we have done so with the supplemental production of documents and continued depositions. If you have questions or wish to discuss the above matters further, I welcome the opportunity to resolve any remaining issues.

EMM

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From: McLeod, Eric M (22257)
Sent: Wednesday, February 08, 2012 7:20 PM
To: Poland, Douglas
Cc: Peter G. Earle (peter@earle-law.com); Maria S. Lazar (lazarms@doj.state.wi.us); Daniel Kelly (DKelly@reinhartlaw.com)
Subject: RE: Baldus et al. v. Brennan et al.

Doug,

I have been out of the office all day today. We will provide you with a privilege log concerning attorney-client communications and address the other issues you raised in your letter tomorrow.

EMM

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From: Moses, Margit [<mailto:MMoses@gklaw.com>]
Sent: Wednesday, February 08, 2012 1:42 PM
To: McLeod, Eric M (22257)
Cc: Peter G. Earle (peter@earle-law.com); Maria S. Lazar (lazarms@doj.state.wi.us); Daniel Kelly (DKelly@reinhartlaw.com); Poland, Douglas
Subject: Baldus et al. v. Brennan et al.

Greetings:

Attached find Doug Poland's letter of this date regarding attorney-client privilege and our request for documents. Please let me know if you have difficulty opening the attachment.

Regards,
Margit Moses

Assistant to Douglas M. Poland

GODFREY & KAHN^{LLC}

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2538

PRIVILEGE LOG

	Date	Author	Recipient(s)	Description	Privilege Asserted
1.	July 12, 2011	Jim Troupis	Tad Ottman, Adam Foltz, Eric McLeod, Raymond Taftora	Email facilitating the provision of legal advice concerning Voting Rights Act	Attorney/Client Privilege
2.	July 13, 2011	Jim Troupis	Tad Ottman, Adam Foltz, Eric McLeod, Raymond Taftora	Email facilitating the provision of legal advice concerning Voting Rights Act	Attorney/Client Privilege
3.	July 13, 2011	Jim Troupis	Adam Foltz, Eric McLeod, Raymond Taftora	Email facilitating the provision of legal advice concerning Voting Rights Act	Attorney/Client Privilege
4.	July 13, 2011	Raymond Taftora	Tad Ottman, Jim Troupis, Adam Foltz, Eric McLeod	Email facilitating the provision of legal advice concerning Voting Rights Act	Attorney/Client Privilege
5.	July 13, 2011	Tad Ottman	Jim Troupis, Adam Foltz, Eric McLeod, Raymond Taftora	Email facilitating the provision of legal advice concerning Voting Rights Act	Attorney/Client Privilege
6.	July 13, 2011	Tad Ottman	Raymond Taftora, Jim Troupis, Adam Foltz, Eric McLeod	Email facilitating the provision of legal advice concerning Voting Rights Act	Attorney/Client Privilege
7.	July 13, 2011	Raymond Taftora	Tad Ottman, Jim Troupis, Adam Foltz, Eric McLeod	Email facilitating the provision of legal advice concerning Voting Rights Act	Attorney/Client Privilege
8.	July 13, 2011	Jim Troupis	Tad Ottman, Raymond Taftora, Adam Foltz, Eric McLeod	Email facilitating the provision of legal advice concerning Voting Rights Act	Attorney/Client Privilege
9.	July 13, 2011	Tad Ottman	Jim Troupis, Eric McLeod, Raymond Taftora, Adam Foltz	Email facilitating the provision of legal advice concerning Voting Rights Act	Attorney/Client Privilege
10.	July 11, 2011	Jim Troupis	Tad Ottman, Adam Foltz, Eric McLeod, Raymond Taftora	Email facilitating the provision of legal advice concerning communities of interest	Attorney/Client Privilege
11.	July 11, 2011	Jim Troupis	Tad Ottman, Eric McLeod, Raymond Taftora, Adam Foltz	Email facilitating the provision of legal advice concerning communities of interest	Attorney/Client Privilege
12.	July 11, 2011	Tad Ottman	Jim Troupis, Eric McLeod, Raymond Taftora, Adam Foltz	Email facilitating the provision of legal advice concerning communities of interest	Attorney/Client Privilege
13.	July 11, 2011	Tad Ottman	Eric McLeod, Jim Troupis, Raymond Taftora	Email facilitating the provision of legal advice concerning communities of interest	Attorney/Client Privilege
14.	Not dated	Jim Troupis	Tad Ottman, Adam Foltz, Eric McLeod, Raymond Taftora	Attachment to July 11, 2011 Email from Jim Troupis (item 10) – draft testimony concerning communities of interest	Attorney/Client Privilege
15.	July 19, 2011	Raymond Taftora	Tad Ottman, Adam Foltz	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege
16.	Not dated			Attachment to July 19, 2011 Email (item 15) – memorandum concerning opposition to SBs	Attorney/Client Privilege

	Date	Author	Recipient(s)	Description	Privilege Asserted
17.	July 11, 2011	Jim Troupis	Tad Ottman, Adam Foltz, Raymond Taftora, Eric McLeod	148, 149 and 150 Email facilitating the provision of legal advice concerning Voting Rights Act	Attorney/Client Privilege
18.	July 11, 2011	Tad Ottman	Jim Troupis, Adam Foltz, Raymond Taftora, Eric McLeod	Email facilitating the provision of legal advice concerning Voting Rights Act	Attorney/Client Privilege
19.	July 12, 2011	Jim Troupis	Tad Ottman, Adam Foltz, Eric McLeod, Raymond Taftora	Email facilitating the provision of legal advice concerning Voting Rights Act	Attorney/Client Privilege
20.	July 12, 2011	Tad Ottman	Jim Troupis, Adam Foltz, Eric McLeod, Raymond Taftora	Email facilitating the provision of legal advice concerning Voting Rights Act	Attorney/Client Privilege
21.	January 31, 2011	Jim Troupis	Tad Ottman, Adam Foltz, Eric McLeod, Sarah Troupis	Email facilitating the provision of legal advice concerning matters related to the retention of expert witnesses and matters related to the engagement	Attorney/Client Privilege
22.	February 1, 2011	Tad Ottman	Jim Troupis, Adam Foltz, Eric McLeod, Sarah Troupis	Email facilitating the provision of legal advice concerning receipt and use of data received from LTSB	Attorney/Client Privilege
23.	February 1, 2011	Eric McLeod	Adam Foltz	Email facilitating the provision of legal advice and specifically concerning the scheduling of a meeting between attorney and client	Attorney/Client Privilege
24.	February 1, 2011	Adam Foltz	Eric McLeod	Email facilitating the provision of legal advice and specifically concerning the scheduling of a meeting between attorney and client	Attorney/Client Privilege
25.	February 1, 2011	Eric McLeod	Adam Foltz	Email facilitating the provision of legal advice concerning and specifically concerning the scheduling of a meeting between attorney and client	Attorney/Client Privilege
26.	February 2, 2011	Eric McLeod	Adam Foltz	Email facilitating the provision of legal advice and specifically concerning the scheduling of a meeting between attorney and client	Attorney/Client Privilege
27.	February 2, 2011	Adam Foltz	Eric McLeod	Email facilitating the provision of legal advice and specifically concerning the scheduling of a meeting between attorney and client	Attorney/Client Privilege
28.	February 3, 2011	Eric McLeod	Adam Foltz	Email facilitating the provision of legal advice and specifically concerning the scheduling of a meeting between attorney and client	Attorney/Client Privilege

	Date	Author	Recipient(s)	Description	Privilege Asserted
29.	April 1, 2011	Jim Troupis	Tad Ottman, Adam Foltz, Sarah Troupis, Sandy Tabachnick, Eric McLeod	Email facilitating the provision of legal advice concerning matters related to the retention of expert witnesses	Attorney/Client Privilege
30.	May 1, 2011	Jim Troupis	Tad Ottman, Adam Foltz	Email facilitating the provision of legal advice and in particular an inquiry concerning the status of the drafting of districts	Attorney/Client Privilege
31.	May 20, 2011	Jim Troupis	Tad Ottman, Adam Foltz, Eric McLeod, Sarah Troupis	Email facilitating the provision of legal advice concerning legal principles governing redistricting and transmittal of memorandum regarding same	Attorney/Client Privilege
32.	December 15, 2011	Jim Troupis	Tad Ottman, Adam Foltz, Eric McLeod	Memo regarding legal principles governing redistricting	Attorney/Client Privilege
33.	June 3, 2011	Jim Troupis	Tad Ottman, Adam Foltz	Email facilitating the provision of legal advice concerning the Voting Rights Act	Attorney/Client Privilege
34.	June 13, 2011	Jim Troupis	Tad Ottman, Adam Foltz, Eric McLeod, Sarah Troupis	Email facilitating the provision of legal advice concerning Voting Rights Act	Attorney/Client Privilege
35.	June 13, 2011	Eric McLeod	Jim Troupis, Tad Ottman, Adam Foltz, Sarah Troupis	Email facilitating the provision of legal advice and specifically the scheduling of meetings	Attorney/Client Privilege
36.	June 13, 2011	Adam Foltz	Jim Troupis	Email facilitating the provision of legal advice concerning Voting Rights Act	Attorney/Client Privilege
37.	June 13, 2011	Adam Foltz	Jim Troupis	Email facilitating the provision of legal advice concerning Voting Rights Act, attaching maps related to AD 8 and AD 9	Attorney/Client Privilege
38.	Not dated			Maps related to AD 8 and AD 9, attached to June 13, 2011 email (item 37)	Documents already produced
39.	June 13, 2011	Jim Troupis	Tad Ottman, Adam Foltz, Eric McLeod, Sarah Troupis	Email facilitating the provision of legal advice concerning redistricting litigation	Attorney/Client Privilege
40.	June 15, 2011	Jim Troupis	Tad Ottman, Adam Foltz, Eric McLeod, Sarah Troupis	Email facilitating the provision of legal advice concerning Voting Rights Act	Attorney/Client Privilege
41.	June 24, 2011	Tad Ottman	Raymond Taftora, Adam Foltz	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege
42.	June 24, 2011	Jim Troupis	Tad Ottman, Eric McLeod, Raymond Taftora, Adam Foltz	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege
43.	June 24, 2011	Tad Ottman	Eric McLeod, Jim Troupis, Adam Foltz	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege
44.	June 24, 2011	Jim Troupis	Tad Ottman, Eric McLeod, Raymond Taftora, Adam Foltz	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege

	Date	Author	Recipient(s)	Description	Privilege Asserted
45.	June 24, 2011	Tad Ottman	Eric McLeod, Jim Troupis, Adam Foltz	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege
46.	June 24, 2011	Eric McLeod	Jim Troupis, Tad Ottman, Raymond Taftora, Adam Foltz	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege
47.	June 24, 2011	Jim Troupis	Eric McLeod, Tad Ottman, Raymond Taftora, Adam Foltz	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege
48.	June 24, 2011	Eric McLeod	Tad Ottman, Adam Foltz	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege
49.	June 24, 2011	Tad Ottman	Jim Troupis, Eric McLeod, Raymond Taftora, Adam Foltz	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege
50.	June 24, 2011	Jim Troupis	Tad Ottman, Eric McLeod, Raymond Taftora, Adam Foltz	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege
51.	June 24, 2011	Tad Ottman	Jim Troupis, Eric McLeod, Raymond Taftora, Adam Foltz	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege
52.	June 27, 2011	Tad Ottman	Eric McLeod, Jim Troupis, Adam Foltz, Raymond Taftora	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege
53.	June 27, 2011	Jim Troupis	Tad Ottman, Eric McLeod, Adam Foltz, Raymond Taftora, Sarah Troupis	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege
54.	June 27, 2011	Tad Ottman	Eric McLeod, Jim Troupis, Adam Foltz	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege
55.	June 27, 2011	Tad Ottman	Jim Troupis, Eric McLeod, Adam Foltz, Raymond Taftora, Sarah Troupis	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege
56.	June 27, 2011	Jim Troupis	Tad Ottman, Eric McLeod, Adam Foltz, Raymond Taftora, Sarah Troupis	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege
57.	June 27, 2011	Tad Ottman	Jim Troupis, Eric McLeod, Adam Foltz, Raymond Taftora, Sarah Troupis	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege
58.	June 27, 2011	Eric McLeod	Tad Ottman, Jim Troupis, Adam Foltz, Raymond Taftora, Sarah Troupis	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege
59.	June 28, 2011	Jim Troupis	Tad Ottman, Adam Foltz, Eric McLeod	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege
60.	June 28, 2011	Tad Ottman	Jim Troupis, Adam Foltz, Eric McLeod,	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege

	Date	Author	Recipient(s)	Description	Privilege Asserted
61.	June 30, 2011	Tad Ottman	Eric McLeod, Jim Troupis, Raymond Taftora, Sarah Troupis, Adam Foltz	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege
62.	June 30, 2011	Jim Troupis	Tad Ottman, Eric McLeod, Raymond Taftora, Sarah Troupis, Adam Foltz	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege
63.	June 30, 2011	Raymond Taftora	Tad Ottman, Eric McLeod, Jim Troupis, Sarah Troupis, Adam Foltz	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege
64.	June 30, 2011	Raymond Taftora	Jim Troupis, Tad Ottman, Adam Foltz, Eric McLeod, Sarah Troupis	Email facilitating the provision of legal advice concerning Voting Rights Act	Attorney/Client Privilege
65.	June 30, 2011	Jim Troupis	Tad Ottman, Adam Foltz, Eric McLeod, Raymond Taftora, Sarah Troupis	Email facilitating the provision of legal advice concerning legal principles governing redistricting	Attorney/Client Privilege
66.	June 30, 2011	Tad Ottman	Raymond Taftora, Jim Troupis, Adam Foltz, Eric McLeod, Sarah Troupis	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege
67.	July 11, 2011	Jim Troupis	Tad Ottman, Adam Foltz, Raymond Taftora, Eric McLeod	Email facilitating the provision of legal advice concerning Voting Rights Act	Attorney/Client Privilege
68.	July 6, 2011	Tad Ottman	Eric McLeod	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege
69.	March 22, 2011	Jim Troupis	Tad Ottman, Adam Foltz, Eric McLeod, Sarah Troupis	Email facilitating the provision of legal advice concerning drafting of redistricting legislation	Attorney/Client Privilege
70.	March 15, 2011	Sarah Troupis	Tad Ottman, Adam Foltz, Eric McLeod, Nathan Moenck, Jim Troupis	Email facilitating the provision of legal advice concerning delayed voting or disenfranchisement, and transmitting memorandum regarding same	Attorney/Client Privilege
71.	March 10, 2011	Tad Ottman	Jim Troupis, Eric McLeod, Adam Foltz	Email facilitating the provision of legal advice concerning delayed voting or disenfranchisement	Attorney/Client Privilege
72.	March 10, 2011	Eric McLeod	Tad Ottman, Jim Troupis, Adam Foltz, Nathan Moenck	Email facilitating the provision of legal advice concerning delayed voting or disenfranchisement	Attorney/Client Privilege
73.	March 11, 2011	Jim Troupis	Eric McLeod, Tad Ottman, Adam Foltz, Nathan Moenck	Email facilitating the provision of legal advice concerning delayed voting or disenfranchisement	Attorney/Client Privilege

	Date	Author	Recipient(s)	Description	Privilege Asserted
74.	February 25, 2011	Tad Ottman	Jim Troupis, Eric McLeod, Adam Foltz	Email facilitating the provision of legal advice concerning drafting of redistricting legislation	Attorney/Client Privilege
75.	February 25, 2011	Eric McLeod	Tad Ottman, Jim Troupis, Adam Foltz	Email facilitating the provision of legal advice concerning drafting of redistricting legislation	Attorney/Client Privilege
76.	July 18, 2011	Tad Ottman	Jim Troupis, Eric McLeod, Raymond Taftora, Adam Foltz	Email facilitating the provision of legal advice concerning contiguity and delayed voting or disenfranchisement	Attorney/Client Privilege
77.	July 18, 2011	Jim Troupis	Tad Ottman, Eric McLeod, Raymond Taftora, Adam Foltz	Email providing legal advice concerning delayed voting or disenfranchisement	Attorney/Client Privilege
78.	July 16, 2011	Tad Ottman	Jim Troupis, Raymond Taftora, Eric McLeod, Adam Foltz	Email facilitating the provision of legal advice concerning delayed voting or disenfranchisement	Attorney/Client Privilege
79.	July 16, 2011	Eric McLeod	Tad Ottman, Jim Troupis, Raymond Taftora, Adam Foltz	Email facilitating the provision of legal advice concerning delayed voting or disenfranchisement	Attorney/Client Privilege
80.	July 16, 2011	Tad Ottman	Jim Troupis, Raymond Taftora, Eric McLeod, Adam Foltz	Email facilitating the provision of legal advice concerning delayed voting or disenfranchisement	Attorney/Client Privilege
81.	July 17, 2011	Jim Troupis	Tad Ottman, Raymond Taftora, Eric McLeod, Adam Foltz	Email facilitating the provision of legal advice concerning delayed voting or disenfranchisement and Voting Rights Act	Attorney/Client Privilege
82.	July 16, 2011	Tad Ottman	Jim Troupis, Raymond Taftora, Eric McLeod, Adam Foltz	Email facilitating the provision of legal advice concerning delayed voting or disenfranchisement	Attorney/Client Privilege
83.	July 12, 2011	Tad Ottman	Jim Troupis, Raymond Taftora, Eric McLeod, Adam Foltz	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege
84.	July 12, 2011	Tad Ottman	Adam Foltz	Email facilitating the provision of legal advice concerning draft redistricting legislation	Attorney/Client Privilege

029472-0001\10976449.1

February 10, 2012

BY HAND DELIVERY

Eric M. McLeod
Michael Best & Friedrich LLP
One South Pinckney Street, Suite 700
Madison, WI 53703

Baldus et al. v. Brennan et al.
U.S. Eastern District of Wisconsin Case No. 11-CV-562

Dear Eric:

Thank you for your correspondence late yesterday and the privilege log you provided. While we are always willing to discuss alternative approaches, the resolution here may well only be found with the Court. We ask that you join us in asking the Court to review, *in camera*, the materials you still hold under the assertion of the lawyer client privilege.

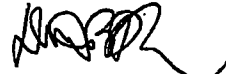
Putting aside the adequacy of the privilege log itself, there is no doubt that the materials are directly relevant to the issues in the litigation. The repeated if opaque log references to the Voting Rights Act, for example, raise more questions than they answer. This is especially true given the latest revelation in the defendants' proposed findings of fact of the central role played by one of the legislature's counsel in the construction of Assembly Districts 8 and 9. Whether or not he provided "legal advice," he was directly involved in the discussion—indeed, negotiation—of district boundaries with one organization. Moreover, even if we accept, under the unusual circumstances of this case, the distinction between legal advice and political and strategic advice, the line between them is not so bright to permit anyone's characterization of the difference with respect to each of the documents you have identified.

We would be glad to discuss this with you today. Given the impending trial, however, we will file an appropriate motion with the Court for *in camera* review unless you are able to

Eric M. McLeod
February 10, 2012
Page 2

join us in a request for that review, which you would initiate by sending the materials to the Court with a joint cover letter. We would appreciate hearing from you by 4:00 p.m. today.

GODFREY & KAHN, S.C.



Douglas M. Poland
Dustin B. Brown

DMP:aeg

cc: Maria Lazar (By Hand Delivery)
Patrick Hodan (By Hand Delivery)
P. Scott Hassett (By Hand Delivery)
Thomas Shriner (By E-mail and U.S. Mail)
Peter Earle (By E-mail and U.S. Mail)

7476829_1

McLeod, Eric M (22257)

From: McLeod, Eric M (22257)
Sent: Friday, February 10, 2012 3:48 PM
To: 'Poland, Douglas'
Cc: 'Patrick J. Hodan'; 'Maria S. Lazar (lazarms@doj.state.wi.us)'; 'Shriner Jr., Thomas L.'; 'Scott Hassett'; 'Peter G. Earle (peter@earle-law.com)'
Subject: RE: Letter from Godfrey & Kahn
Attachments: 2_10_12 Ltr. from Atty. Poland re privilege log - # 10982416 v 1.pdf

Doug,

This email concerns your letter of today's date, a copy of which is attached.

First, as noted in my earlier response below, you have implied that the privilege log we produced yesterday was insufficient. I asked that you provide us with the specific basis for such a claim. I have not yet received a response on that issue.

Second, with respect to the documents we have withheld on grounds of attorney-client privilege, you asked that we consent to the submission of those documents to the Court for *in camera* review. Ordinarily we would expect a party making such a request to first explain the basis for challenging the validity of our assertion of the attorney-client privilege. However, we believe that in light of the pending trial date, and to avoid unnecessary motion practice, the most expeditious way to resolve these matters is to submit the documents for *in camera* review.

Importantly, given that the three-judge panel is the ultimate fact-finder in this case, we believe it would only be appropriate to submit the documents for review by a Magistrate Judge. We will stipulate to such a procedure and would be happy to discuss the process by which that can occur.

Please feel free to call me to discuss these matters further.

EMM

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(608) 283-2275 (fax)
emmcleod@michaelbest.com
www.michaelbest.com

From: McLeod, Eric M (22257)
Sent: Friday, February 10, 2012 12:19 PM
To: 'Poland, Douglas'
Cc: 'Patrick J. Hodan'; 'Maria S. Lazar (lazarms@doj.state.wi.us)'; 'Shriner Jr., Thomas L.'; 'Scott Hassett'; 'Peter G. Earle (peter@earle-law.com)'
Subject: FW: Letter from Godfrey & Kahn

Doug,

We are in receipt of your letter of today's date, a copy of which is attached.

We are considering the matters you have raised in that letter and will respond this afternoon.

In the meantime, you have implied that the privilege log we produced is insufficient in some respect. We have sought to comply with all of our obligations related to the production of the privilege log. If, in fact, you contend that the privilege log is insufficient, please let us know your specific concerns so that we may address them.

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McLeod, Eric M (22257)

From: Brown, Dustin [DBrown@gklaw.com]
Sent: Friday, February 10, 2012 5:04 PM
To: McLeod, Eric M (22257); Poland, Douglas
Cc: Patrick J. Hodan; Lazar, Maria S.; Shriner Jr., Thomas L.; Scott Hassett (pshassett@yahoo.com); Peter Earle
Subject: RE: Letter from Godfrey & Kahn

Eric,

Doug is traveling. Please draft a proposed letter on both parties' behalf for our review that we will send jointly Monday morning.

We suggest that each side submit a memorandum of no more than three pages in support of its position. We can discuss procedure further once Doug is available.

Thanks,
Dustin

Dustin B. Brown
Attorney

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EMAIL • DBrown@gklaw.com
WWW • GKLAW.COM

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From: "McLeod, Eric M (22257)" <EMMcLeod@michaelbest.com>
Date: February 10, 2012 4:48:02 PM EST
To: "Poland, Douglas" <DPoland@gklaw.com>
Cc: "Patrick J. Hodan" <phodan@reinhardtllaw.com>, "Maria S. Lazar (lazarms@doj.state.wi.us)" <lazarms@doj.state.wi.us>, "Shriner Jr., Thomas L." <TShriner@foley.com>, "Scott Hassett" <pshassett@yahoo.com>, "Peter G. Earle (peter@earle-law.com)" <peter@earle-law.com>
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Importantly, given that the three-judge panel is the ultimate fact-finder in this case, we believe it would only be appropriate to submit the documents for review by a Magistrate Judge. We will stipulate to such a procedure and would be happy to discuss the process by which that can occur. Please feel free to call me to discuss these matters further.

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From: McLeod, Eric M (22257)

Sent: Friday, February 10, 2012 12:19 PM

To: 'Poland, Douglas'

Cc: 'Patrick J. Hodan'; 'Maria S. Lazar (lazarms@doj.state.wi.us)'; Shriner Jr., Thomas L.; 'Scott Hassett'; 'Peter G. Earle (peter@earle-law.com)'

Subject: FW: Letter from Godfrey & Kahn

Doug,

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McLeod, Eric M (22257)

From: Poland, Douglas [DPoland@gklaw.com]
Sent: Saturday, February 11, 2012 4:27 PM
To: McLeod, Eric M (22257)
Cc: Daniel Kelly (dkelly@reinhardtllaw.com); Patrick J. Hodan; Lazar, Maria S.; Shriner Jr., Thomas L.; Kasper, Kellen C.; James Olson; Scott Hassett (ps Hassett@yahoo.com); Brown, Dustin
Subject: RE: Letter from Godfrey & Kahn

Eric,

The procedure outlined in Dustin's e-mail yesterday is generally fine, although it will need to be modified.

First, no magistrate has been assigned to this case. Consequently, the letter must be addressed to the three judge panel and will need to identify the dispute for the Court and request that the Court appoint a magistrate for the purpose of reviewing the three-page memorandums and performing the *in camera* review we have discussed.

Second, we received yesterday from the GAB two documents that go to the very heart of the subject matter of the documents over which you are asserting the attorney-client privilege. The GAB's contested findings of fact that it will include in the parties' joint pretrial order contains numerous paragraphs referring to specific communications between the legislature and certain members of the Latino community in Milwaukee. As we know from documents that have been produced in this case, many of those communications occurred on the very same days as communications identified on your privilege log relating to Section 2 issues and involving Messrs. Foltz and Ottman. Second, the GAB has moved for summary judgment on the plaintiffs' Section 2 claims involving the Latino districts. The combined effect of these documents is that it places a priority on the plaintiffs' need to resolve this issue as soon as possible on Monday morning. We will therefore need to agree on the language of a letter to be submitted to the Court no later than 5 p.m. tomorrow (Sunday) so that the letter can be submitted to the Court by 9 a.m. on Monday for the Court's action.

Finally, you have asked us to identify the shortcomings in the privilege log that you provided. Our letter of yesterday identified the characterization of the communications in your privilege log as being insufficient to permit a determination of whether the communications in question are, as your privilege log asserts, for the purpose of "facilitating the provision of legal advice" or for some other purpose. That your descriptions stating legal conclusions (rather than identifying the topic discussed) are inadequate is, as noted in our letter yesterday, likely beside the point, if not for the simple reason that even if the topics were identified, we might disagree on whether those topics implicate legal or some other type of advice. Therefore, although we will certainly review any revised privilege log that you provide to us, as we stated yesterday, given the imminent pretrial deadlines and trial, we believe the necessary course of action is as set forth above.

Please forward your proposed letter to the Court so that we may review it and get back to you in a timely manner. If, notwithstanding our efforts to reach an agreement, you are unable to do that promptly, we will file a formal motion on Monday.

Douglas M. Poland
Attorney

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From: Brown, Dustin
Sent: Friday, February 10, 2012 5:04 PM
To: McLeod, Eric M (22257); Poland, Douglas
Cc: Patrick J. Hodan; Lazar, Maria S.; Shriner Jr., Thomas L.; Scott Hassett (pshassett@yahoo.com); Peter Earle
Subject: RE: Letter from Godfrey & Kahn

Eric,

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We suggest that each side submit a memorandum of no more than three pages in support of its position. We can discuss procedure further once Doug is available.

Thanks,
Dustin

Dustin B. Brown
Attorney

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Date: February 10, 2012 4:48:02 PM EST
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Cc: "Patrick J. Hodan" <phodan@reinhardtllaw.com>, "Maria S. Lazar" (lazarms@doj.state.wi.us) "lazarms@doj.state.wi.us", "Shriner Jr., Thomas L." <TShriner@foley.com>, "Scott Hassett" <pshassett@yahoo.com>, "Peter G. Earle" (peter@earle-law.com)" <peter@earle-law.com>
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Brandt, Karen J (15243)

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Eastern District of Wisconsin

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The following transaction was entered by McLeod, Eric on 2/13/2012 at 11:31 AM CST and filed on 2/13/2012

Case Name: Baldus et al v. Brennan et al
Case Number: 2:11-cv-00562-JPS-DPW-RMD
Filer:
Document Number: 132

Docket Text:

LETTER from Attorney Eric McLeod to Judges Wood, Stadtmueller and Dow. (Attachments: # (1) Exhibit A - 2/4/12 Ltr. from Atty. Poland to Atty. McLeod, # (2) Exhibit B - Email dated 2/6/12, # (3) Exhibit C - Email dated 2/7/12, # (4) Exhibit D - 2/8/12 Ltr. from Atty. Poland to Atty. McLeod, # (5) Exhibit E - Email dated 2/9/12, # (6) Exhibit F - 2/10/12 Ltr. from Atty. Poland to Atty. McLeod, # (7) Exhibit G - Email dated 2/10/12, # (8) Exhibit H - Email dated 2/10/12, # (9) Exhibit I - Email dated 2/11/12)(McLeod, Eric)

2:11-cv-00562-JPS-DPW-RMD Notice has been electronically mailed to:

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Document description:Exhibit D - 2/8/12 Ltr. from Atty. Poland to Atty. McLeod

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Document description:Exhibit E - Email dated 2/9/12

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Document description:Exhibit F - 2/10/12 Ltr. from Atty. Poland to Atty. McLeod

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Document description:Exhibit G - Email dated 2/10/12

Original filename:

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Document description:Exhibit H - Email dated 2/10/12

Original filename:

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